

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District E.D. Pennsylvania	
Name (under which you were convicted): Timothy Baukman		Docket or Case No.: 05-440	
Place of Confinement: Federal Medical Center P.O. Box 879 Ayer, Ma 01432		Prisoner No.: 60388-066	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) Timothy Baukman	
v.			

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court for The Eastern District of Pennsylvania

(b) Criminal docket or case number (if you know): 05-440

2. (a) Date of the judgment of conviction (if you know): 11/2/2010

(b) Date of sentencing: 11/2/2010

3. Length of sentence: 360 Months

4. Nature of crime (all counts):

Conspiracy offense (Count 1), CCE offense (Count 2), maintaining a storage facility, 21 U.S.C. § 856(a)(2) (Count 61), possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841 (a)(1) (Count 62); two counts of possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(Counts 63, 68); 31 counts of money laundering 18 U.S.C. § 1956(a)(1)(A)(i) ("promotion" money laundering) (Counts 89-120); and 54 counts of money laundering, 18 U.S.C. § 1956(a)(1)(B)(i).

5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: Third Circuit Court of Appeals
- (b) Docket or case number (if you know): 10-4373
- (c) Result: Affirmed
- (d) Date of result (if you know): 1/16/2014
- (e) Citation to the case (if you know): U.S. v. Baukman, 558 Fed. Appx. 173 (3rd Cir. 2014)
- (f) Grounds raised:

The Court erred in denying the Rule 29 Motion on the CCE Count. The Court erred in denying the Rule 29 Motion on the 924(c) Count. The Court erred in denying the Rule 29 Motion on the Money Laundering Count. The Evidence was insufficient to convict on the 21 USC 856 count. The Evidence was insufficient to convict on the 21 USC 846 Count. The drug quantity attributed to Baukman was not submitted to the jury, violating Apprendi.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): 13-10588
- (2) Result:
Writ Cert Denied
- (3) Date of result (if you know): 10/6/2014
- (4) Citation to the case (if you know): Baukman v. United States, 2014 U.S. LEXIS 6727 (U.S.
- (5) Grounds raised:

Did the Third Circuit violate Petitioner's Sixth Amendment Right. Did the Third Circuit violate Petitioner's Due Process rights. Was Baukman's Sixth Amendment right to counsel violated. Does a conflict exists between the Circuits in defining CCE elements of "occupying a position of organizer, supervisor or any other position of management."

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

Sixth Amendment Violation - Ineffective Assistance of Counsel.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel rendered ineffective assistance when he failed to advise Baukman of the application of the Federal Sentencing Guidelines even in the most basic terms. (See Memorandum of Law)

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Ineffective of Counsel Claims are to be raised for the first time in a Title 28 USC 2255

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

Sixth Amendment Violation - Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.)

Counsel rendered ineffective assistance when he filed a motion to suppress without familiarizing himself with the facts of the warrant. (See Memorandum of Law)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective of Counsel Claims are to be raised for the first time in a Title 28 USC 2255.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE:

Sixth Amendment Violation - Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel rendered ineffective assistance when he failed to realize that the introduction of the "Menace" movie was required for the defense of the case since Baukman was the Director/Producer of the movie. (See Memorandum of Law)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective of Counsel Claims are to be raised for the first time in a Title 28 USC 2255.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

Sixth Amendment Violation - Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel rendered ineffective assistance by failing to prepare a memorandum to the court in preparation for jury charge clarifying the CCE overt act requiring a continuing series of violations requiring a unanimous verdict. (See Memorandum of Law)

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective of Counsel Claims are to be raised for the first time in a Title 28 USC 2255.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All issues raised herein are based on Sixth Amendment violation due to ineffective assistance of counsel and raised for the first time in this Title 28 USC 2255.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court:

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Jack McMahon, 1500 Walnut Street, Suite 900, Philadelphia, PA 19102

(b) At arraignment and plea:

Jack McMahon, 1500 Walnut Street, Suite 900, Philadelphia, PA 19102

(c) At trial:

Jack McMahon, 1500 Walnut Street, Suite 900, Philadelphia, PA 19102

(d) At sentencing:

Jack McMahon, 1500 Walnut Street, Suite 900, Philadelphia, PA 19102

(e) On appeal:

Stephen Britt, PO Box 1746, Blue Bell, PA 19422

(f) In any post-conviction proceeding:

John J. Griffin, 239 S. Camac Street, Philadelphia, PA 19107

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Petition is timely under the Anti-Terrorism and Effective Death Penalty Act of 1996.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate the Conviction and Sentence and/or Grant an Evidentiary Hearing

or any other relief to which movant may be entitled.

JG1063

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 10/5/2015 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

Represented by Counsel.

**TITLE 28 USC 2255 PETITION
CONTINUATION**

GROUND FIVE:

Sixth Amendment Violation - Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective when he failed to advise the court that Baukman was not present during the point when the jury note was addressed.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

___ Yes X No “

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective of Counsel Claims are to be raised for the first time in a Title 28 USC 2255.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

___ Yes X No